

1 XAVIER BECERRA  
2 Attorney General of California  
3 SALLY MAGNANI  
4 Senior Assistant Attorney General  
5 SUSAN S. FIERING (SBN 121621)  
Supervising Deputy Attorney General  
ROSE B. FU (SBN 119757)  
MARY THARIN (SBN 293335)  
Deputy Attorneys General  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550  
Telephone: (510) 879-0190  
Fax: (510) 622-2270  
E-mail: Rose.Fua@doj.ca.gov  
*Attorneys for the State of California by and through  
Xavier Becerra, Attorney General*

10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION  
14

15 **OAKLAND BULK & OVERSIZED  
TERMINAL, LLC,**

Case No. 3:16-cv-07014-VC

16 Plaintiff,

17 v.

18 **CITY OF OAKLAND, ET AL.,**

19 Defendants.

20 **NOTICE OF MOTION AND MOTION  
OF THE STATE OF CALIFORNIA, BY  
AND THROUGH XAVIER BECERRA,  
ATTORNEY GENERAL, TO FILE AN  
AMICUS CURIAE BRIEF IN SUPPORT  
OF DEFENDANTS**

21 Date: January 10, 2018

Time: 10:00 a.m.

Court: No. 4, 17th Floor

Judge: Honorable Vince Chhabria

22  
23 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24 PLEASE TAKE NOTICE THAT the State of California, by and through Xavier Becerra,  
25 Attorney General, hereby moves the Court for leave to file an amicus curiae brief in the above-  
26 captioned case in support of Defendants. A copy of the proposed amicus brief is attached as an  
27 exhibit to this motion. Defendant City of Oakland has consented to and supports the filing of the  
28

1 amicus brief. Defendant-Intervenors Sierra Club and San Francisco Baykeeper consented to the  
 2 filing of the Amicus Brief. Plaintiff OBOT declined to consent.

3 District courts have wide discretion to grant leave to participate as amicus curiae. *Hoptowit*  
 4 *v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (*abrogated on other grounds by Sandin v. Conner*,  
 5 515 U.S. 472 (1995)). This discretion is liberally applied when the legal issues in a case “have  
 6 potential ramifications beyond the parties directly involved.” *NGV Gaming, Ltd. v. Upstream*  
 7 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005). The Ninth Circuit has  
 8 described the “classic role” of an amicus to include “assisting in a case of general public interest.”  
 9 *Funbus Sys., Inc. v. State of Cal. Pub. Utilities Comm’n*, 801 F.2d 1120, 1125 (9th Cir. 1986).

10 In the absence of specific rules governing amicus appearances at the district court level,  
 11 district courts may look to the rules governing amicus participation in appellate courts. *See Ass’n*  
 12 *of Am. Physicians & Surgeons, Inc. v. Brown*, No. 2:16-cv-02441-MCE-EFB, 2017 WL 4351766,  
 13 at \*2 (E.D. Cal. Sept. 29, 2017) (granting motion for leave to file as amicus curiae pursuant to  
 14 Fed. R. App. P. 29). In federal appellate courts, states may file amicus curiae briefs as of right.  
 15 Fed. R. App. P. 29 (“a State may file an amicus-curiae brief without the consent of the parties or  
 16 leave of court”).

17 The State of California has an interest in both the subject matter and legal implications of  
 18 the controversy currently before this Court. This case raises issues of environmental justice. The  
 19 City of Oakland’s Ordinance No. 13385 is a health and safety regulation intended to protect some  
 20 of its most at-risk residents from increased pollution from the handling of coal. The California  
 21 Environmental Protection Agency has designated West Oakland as a disadvantaged community  
 22 based on an analysis of environmental and socioeconomic factors. Oakland Br., Dkt 145, at 14.  
 23 Further, the California Air Resources Board has found that concentrations of air pollution in West  
 24 Oakland are far higher than Bay Area averages. See attached Brief of Amicus Curiae at 4. The  
 25 proposed loading and unloading of coal and petcoke at the Oakland Bulk & Oversized Terminal  
 26 (“OBOT”) threatens to exacerbate the already degraded air quality in this area. *Id.*

27 The State of California also has a number of statutes and initiatives seeking to protect  
 28 environmental justice communities that are subject to excessive levels of pollution. For instance,

1 SB 1000, now codified in Government Code section 65302 requires that each city or county  
2 include in its general plan an environmental justice element to identify objectives and policies to  
3 reduce the unique or compounded health risks in disadvantaged communities. Thus, the State  
4 seeks to weigh in on this matter of public interest because it has the potential to undermine the  
5 ability of local governments to protect their most vulnerable communities.

6 In addition, the State has an interest in offering its perspective on the Constitutional and  
7 federal preemption issues implicated by the present matter. California has created and  
8 implemented many environmental policies and initiatives that face frequent challenges on the  
9 grounds of federal preemption and the dormant Commerce Clause. Thus, California has an  
10 interest in ensuring that the courts construe the preemption and Commerce Clause doctrines in a  
11 manner that will protect the general police powers which reserve the protection of health, safety  
12 and the environment to states and municipalities. The State therefore submits the attached brief  
13 in order to assist the Court in reviewing the Constitutional and federal preemption issues in this  
14 case in a manner that recognizes the significant State interests at stake.

15

16 Dated: December 8, 2017

Respectfully submitted,

17

XAVIER BECERRA  
Attorney General of California  
SALLY MAGNANI  
Senior Assistant Attorney General  
SUSAN S. FIERING  
Supervising Deputy Attorney General  
MARY THARIN  
Deputy Attorney General

18

19

20

21

22

/s/ Rose B. Fua

ROSE B. FUA

Deputy Attorney General

*Attorneys for the State of California by and  
through Xavier Becerra, Attorney General*

23

24

25

26

27

28